

**STATE OF VERMONT  
VERMONT SUPREME COURT  
DECEMBER TERM, 2008**

**Order Promulgating Emergency Amendments to Forms 72 and 80 of the Vermont Rules of Probate Procedure**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Form 72 in the Appendix of Forms to the Vermont Rules of Probate Procedure be replaced to read as follows:

**FORM 72. PETITION FOR APPOINTMENT OF GUARDIAN FOR AN ADULT PERSON**

STATE OF VERMONT  
DISTRICT OF \_\_\_\_\_, SS.

PROBATE COURT  
DOCKET NO. \_\_\_\_\_

GUARDIANSHIP OF: \_\_\_\_\_

OF: \_\_\_\_\_

PETITION FOR APPOINTMENT OF GUARDIAN FOR AN ADULT PERSON

The undersigned (petitioner) represents that it is necessary that a guardian be appointed for the following individual (respondent):

Name	Residence Address	DOB
_____	_____	_____
_____	_____	_____

(Current location if different from above) \_\_\_\_\_

**In support of this petition, the undersigned provides the following:**

A. The name and address of anyone known to the petitioner who is:

Currently serving as a guardian (Attach a copy of appointment)

\_\_\_\_\_

Currently named as Agent in an Advance Directive document (Attach a copy)

\_\_\_\_\_

Currently acting as Agent under a Power of Attorney document (Attach a copy)

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B. The petitioner's relationship to the respondent is (check one):

- ☐ friend/neighbor      ☐ public official      ☐ relative \_\_\_\_\_  
☐ social worker      ☐ physician      ☐ other (attach explanation) \_\_\_\_\_

C. The respondent is alleged to be a person in need of guardianship, is at least 18 years of age or will be within four months of the filing of the petition, and is disabled from (check one):

- ☐ Mental Illness      ☐ Developmental Disability      ☐ Traumatic Brain Injury  
☐ Other \_\_\_\_\_

D. List specific reasons with supporting facts as to why guardianship is sought:

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E. The petitioner requests the following powers (check all that apply):

- ☐ To exercise general supervision over the person under guardianship, including care, habilitation, education, and employment;  
☐ To give or withhold consent to medical or dental treatment, subject to the provisions of 14 V.S.A. § 3075, and any constitutional rights of the person under guardianship to refuse treatment;  
☐ To exercise financial supervision over the income and resources of the person under guardianship;  
☐ To approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make;  
☐ To approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to the provisions of 14 V.S.A. § 2881 et seq.;  
☐ To obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

F. Have other alternatives to guardianship been considered? If yes, please explain:

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G. Name and address of proposed guardian:

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Telephone (     ) \_\_\_\_\_

The undersigned understands that the Court must order an evaluation of the respondent to be performed by someone who has specific training and demonstrated competence to evaluate a person in need of guardianship. The evaluation shall be completed within 30 days of the filing of the petition with the court unless the time period is extended by the court for cause.

Name and address of evaluator:

\_\_\_\_\_  
\_\_\_\_\_

The undersigned understands that the Court must appoint an attorney to represent the respondent in this proceeding.

Name and address of the respondent's attorney, if any:

\_\_\_\_\_  
\_\_\_\_\_

Dated \_\_\_\_\_

Signed \_\_\_\_\_, Petitioner

Print name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone ( ) \_\_\_\_\_

### **I CONSENT TO BE APPOINTED GUARDIAN OF THE ABOVE RESPONDENT**

Signature of proposed guardian: \_\_\_\_\_

Date: \_\_\_\_\_

Attachments as follows:

1. \$50.00 entry fee, payable to \_\_\_\_\_ Probate Court
2. Statement of proposed respondent's assets and income (Form No. 73)
3. List of interested persons (Form No. 75)
4. Copy of advance directive and/or any power of attorney
5. You also may be required to submit consents necessary for a complete background check.

Guardianship shall be utilized only as necessary to promote the well-being of the individual and to protect the individual from violations of his or her human and civil rights. It shall be designed to encourage the development and maintenance of maximum self-reliance and independence in the

individual and only the least restrictive form of guardianship shall be ordered to the extent required by the individual's actual mental and adaptive limitations. The state of Vermont recognizes the fundamental right of an adult with capacity to determine the extent of health care the individual will receive. 14 V.S.A. § 3060.

### **Reporter's Notes—2009 Emergency Amendment**

Form 72 is replaced to implement recent amendments of 14 V.S.A. ch. 111, enacted by Act 186 of 2007 (Adj. Sess.), which took effect on July 1, 2008. It is promulgated as an emergency amendment to establish uniformity of practice among the probate courts. The new form expressly asserts the policy declared in 14 V.S.A. § 3060 as amended, recognizing "the fundamental right of an adult with capacity to determine the extent of health care the individual will receive." The form uses new terms consistent with that policy that are defined in amended 14 V.S.A. § 3061. The form incorporates the requirements for the petition set out in 14 V.S.A. § 3063 and is consistent with other requirements of chapter 111 as amended. Simultaneous amendments have been made to Form 80 (Appointment of Guardian).

2. That Form 80 in the Appendix of Forms to the Vermont Rules of Probate Procedure be replaced to read as follows:

### **FORM 80. APPOINTMENT OF GUARDIAN**

STATE OF VERMONT

DISTRICT OF \_\_\_\_\_, SS.

PROBATE COURT

DOCKET NO. \_\_\_\_\_

IN RE THE GUARDIANSHIP OF

\_\_\_\_\_  
OF \_\_\_\_\_

### **APPOINTMENT OF GUARDIAN**

For the reasons stated in the findings and conclusions, the Probate Court for the District of \_\_\_\_\_ appoints \_\_\_\_\_ of \_\_\_\_\_

- ☐ as guardian for the above named person (with all powers).
- ☐ as limited guardian for the above named person (with limited powers).

You are granted the following powers with respect to this guardianship:

- ☐ 1. To exercise general supervision over the person under guardianship. This includes care, habilitation, education and employment, and choosing or changing the residence subject to the requirements of 14 V.S.A. §§ 2691, 3073 and 3074. 14 V.S.A. § 3069(c)(1).

☐ 2. To give or withhold consent to medical or dental treatment, subject to the provisions of 14 V.S.A. 3075 and any constitutional right of the person under guardianship to refuse treatment. 14 V.S.A. § 3069(c)(2).

☐ 3. To exercise financial supervision over the income and resources of the person under guardianship. 14 V.S.A. § 3069(c)(3).

☐ 4. To approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make. 14 V.S.A. § 3069(c)(4).

☐ 5. To approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to the provisions of 14 V.S.A. § 2881 et seq. 14 V.S.A. § 3069(c)(5).

☐ 6. To obtain legal advice and to commence or defend against court actions in the name of the person under guardianship. 14 V.S.A. § 3069(c)(6).

In discharging your obligation, you shall:

- ☐ file with the court within 30 days a true inventory of all the real and personal property of the person under guardianship.
- ☐ render a personal status report on each anniversary of your appointment date.
- ☐ manage and dispose of the estate and effects according to law and for the best interests of the person under guardianship
- ☐ render an account of the property of the person under guardianship each year on the anniversary of your appointment or at any time the court may require.
- ☐ upon expiration of this appointment, render and settle the account and pay over and deliver the estate and remaining effects to persons legally entitled to same.
- ☐ provide public notice of the limitation of the person under guardianship's ability to contract if so ordered by the court. (see Rule 80.1)

The powers, duties and responsibilities of persons appointed as fiduciaries are detailed in the pamphlet entitled "Instructions to Guardians" which is furnished with this appointment. All guardians are required to perform their duties according to these instructions, the rules of probate procedure, and the laws of Vermont.

The guardian shall exercise supervisory powers in a manner which is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision.

Dated \_\_\_\_\_

Signed \_\_\_\_\_, Judge

(SEAL)

Probate Court, District of \_\_\_\_\_

### **Reporter's Notes—2009 Emergency Amendment**

Form 80 is replaced to implement recent amendments of 14 V.S.A. ch. 111, enacted by Act 186 of 2007 (Adj. Sess.), which took effect on July 1, 2008. It is promulgated as an

emergency amendment to establish uniformity of practice among the probate courts. The form uses new terms consistent with that policy that are defined in amended 14 V.S.A. § 3061 and is consistent with other requirements of chapter 111 as amended. Thus, it recognizes the elimination of the explicit distinction between “total” and “limited” guardianships reflected in the amendment of 14 V.S.A. § 3069 and the repeal of former § 3070. It provides for grant of the specific powers set forth in amended 14 V.S.A. § 3069(c) and also expressly embodies the provisions of that section and amended § 3069(e) that the powers of a guardian shall be granted “in the least restrictive manner” appropriate. See also 14 V.S.A. § 3060 as amended. Simultaneous amendments have been made to Form 72 (Petition for Appointment of Guardian for Adult Person).

3. That these emergency amendments are prescribed and promulgated effective on January 1, 2009. The Reporter's Notes are advisory.

4. That the Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11, because they reflect changes made necessary to implement recent amendments to 14 V.S.A. ch. 111, enacted by Act 186 of 2007 (Adj. Sess.), which took effect on July 1, 2008. The Court's Advisory Committee on Rules for Probate Proceedings is directed to consider and report to the Court pursuant to Administrative Order No. 11 by September 30, 2009, on any comments that may be received on these emergency amendments.

5. That the Chief Justice is authorized to report these emergency amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 17<sup>th</sup> day of December, 2008.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice